

ARIZONA

REAL ESTATE BULLETIN

Arizona Department of Real Estate • Vol XXVI, No. 2

October
2000

On-line Edition
www.re.state.az.us

Up-to-the-minute licensee database is on-line

Provides up-to-date information about more than 45,000 licensees

Visitors to the Department's Web site at www.re.state.az.us may now access the same database used by Department employees to check such things as license expiration date, type of license, license number and employing broker.

On the Home Page, click the button labeled "Directory of Licensees."

The software that provides access to the database was designed by the Department's Computer Network Administrator, Kevin Goode.

"We are pleased to be able to make this information available to the public," said Real Estate Commissioner Jerry Holt. "We handle scores of telephone calls each month from people seeking information that is now available on-line. Instead of making a sometimes time-consuming phone call, anyone can

now find the information they seek in a few seconds, 24-hours a day, on the Internet."

The on-line database is updated instantly when changes are entered by Licensing Division employees.

Visitors may search the database for individual licensees by entering the licensee's last or first and last name. They will then see:

- The type of license (real estate, cemetery, membership-camping broker, associate broker or sales person;
- License number
- License expiration date
- License status (active or inactive)
- Employer's name, business address and telephone number

Licensees' home addresses and telephone numbers are not displayed.

Database users may also search Arizona's more than 4,500 licensed real estate firms to obtain:

- A firm's address and telephone

number

- Designated broker and the broker's license information (as shown for an individual search, above)
- A list of main and branch office licensed employees.

A search may also be made by franchise name. Century 21 (C21-) or Re/Max (RMA) for instance, will produce a list of all franchisees in the state.

When licensees renew a license, request changes in license status (active or inactive), leave the employ of one broker and become employed by another broker, make other changes in license information or become newly licensed, the new information is not displayed until approved by the Department. Three to five days may pass before the database reflects the new information.

It will soon be possible to download the entire database of more than 45,000 records in a form suitable for insertion in a user's database.

Arizona Department of Real Estate

Online Database Access Service



[Main Search](#)

[Instructions](#)

[Table of Contents](#)

Please select from the following list...

Search

- [Licensed Individuals](#)
- [Licensed Entities](#)

The Online Database Access Service main screen permits visitors to search for licensed individuals or licensed entities. You may search

for individual licensees or for licensed entities (brokerages) and view the results almost instantly. The data is the latest information available.

Confused about the new Affidavit of Disclosure? You're not alone.

There seems to be much confusion about the new Affidavit of Disclosure requirement enacted by A.R.S. § 11-806.03. We asked Subdivision Division Director Roy Tanney if he would clarify the requirement for our readers. Here's what he says:

What you need to understand and know is:

1. The ADRE has no jurisdiction over any part of this law. Our involvement with the provisions of this law will be limited to dealing with a citizen's complaint which alleges the failure of a licensee to adequately represent a client (Seller or Buyer) as to the requirements and provisions of the law. The seller is responsible for the accuracy of the Affidavit of Disclosure. Neither the ADRE, County Government, or County Recorder have any responsibility for the Affidavit's content.

2. This law does not apply to Subdivided Lands. Our interpretation has been that the sale of a lot or parcel located within the boundaries of a recorded subdivision map is not subject to the disclosure requirement. However, what if the subdivision lot is being split? An argument can be made that the land being split off is not a lot in the subdivision because it was not originally created on the subdivision map. Therefore, the lot is not subdivided land and is not exempt from the Affidavit of Disclosure requirement. Absent case law on this specific question, we recommend erring on the side of caution and proceed as if the law applies to the splitting of subdivision lots.

3. The sale of parcels located within the boundaries of a recorded Unsubdivided Land development map is not exempt from the disclosure requirement. Unsubdivided Lands is a class of land development which consists of 6 or more parcels, each of which is 36 acres or more in size. We find no language in the law that excludes Unsubdivided Land parcels from the affect of the law. Therefore, even though a developer of Unsubdivided Lands is required to obtain a public report and provide it to purchasers, the developer will also need to prepare the Affidavit of Disclosure and satisfy all provisions of the law, including the recordation of the Affidavit. Further, any purchaser of

an Unsubdivided Land parcel will need to comply with and satisfy the provisions of this law prior to the resale or splitting of the parcel.

4. This law does not apply to lands which are located within the corporate boundaries of a Town or City.

5. The law and its requirements not only apply to the first time seller but all subsequent sellers of the land. Each seller of land, which is subject to the provisions of the law, must prepare and record the Affidavit of Disclosure. Further, a buyer must be given the Affidavit at least 7 days prior to the transfer of the property and the buyer has 5 days to rescind the purchase after receipt of the Affidavit.

6. Prior to recording Affidavits of Disclosure, you should consult with the County Recorders on proper document format. To assist County Recorders in the processing and indexing of Affidavits, we recommend that the Affidavit include the correct legal description of the land and accurate names of the seller(s) and buyer(s). Your Affidavit can be rejected for recordation if it does not meet all requirements.

7. Affidavits by nature are a sworn statement and must be adequately executed by the seller of the property with proper notary acknowledgement of signature(s).

8. This law applies to land regardless of whether there are improvements located on the land, including dwellings.

This is not a legal opinion, nor a complete analysis or explanation of the provisions of A.R.S. § 11-806.03. We recommend that you obtain a copy of the law, read it, and, if not understood, consult with your broker or attorney. Further, there may be other disclosures required to be provided to the buyer over and above those disclosures required by this law.

The Arizona Association of Realtors® has created a disclosure document prepared by legal counsel that AAR believes complies with the new statute. To download a copy in Adobe Acrobat (pdf) format, visit the AAR Web site at www.aaronline.com. Enter disclosure as the search term in the search box at the top-left of the page. In the resulting page, select "Land Affidavit of Disclosure Form and Instructions."

Department's 2001 legislative package on-line

Text of the Department's proposed legislation package to be introduced during the 2001 legislative session is now available on our Web site.

Point your browser at the ADRE Home Page, www.re.state.az.us, then click on "Download Forms." The document is available in Adobe Acrobat (pdf) format.

Written or oral comments should be submitted to the Department by November 1, 2000. This will give us time to make changes and satisfy our deadline.

Please direct your comments to either Roy Tanney at 602-468-1414, ext. 410, or to Commissioner Holt at extension 135. You may also e-mail your comments to:

Roy Tanney: rtanney@re.state.az.us

Jerry Holt: jholt@re.state.az.us

Written comments may be directed to ADRE, 2910 N 44th St., Ste 100, Phoenix AZ 85018.

Deputy Commissioner undergoes heart bypass surgery

Deputy Commissioner John King underwent quintuple bypass heart surgery October 4 in Phoenix.

"The operation was successful, and John is resting at home," said Commissioner Jerry Holt. "We hope he will be back at work soon."

Commissioner Holt underwent heart bypass surgery May 2 and returned to work on September 7. "I know exactly what John is going through, but I know that he'll feel much better after his recovery," said the Commissioner.

Messages may be sent to Mr. King by e-mail at dsulista@re.state.az.us or mailed to the Department.

Visit the Department's
Web site at
www.re.state.az.us



Jerry Holt

News From The Commissioner

As you may know, I returned to work on September 7 after recovering from heart bypass surgery. It was a bit disconcerting to learn that the Department ran without any major problems while I was gone for more than four months. But, of course, that's a tribute to my splendid staff.

It's very good to be back at the helm, and I feel far better than before. I had excellent medical care, a gifted surgeon, and I've embarked on a rehabilitation program that I am confident will prevent any further problems.

Now, our Deputy Commissioner, John King, is recovering from the same surgery performed by the same physician just last week. We hope that the need for heart bypass surgery in the Department is not contagious.

I'm told John's surgery was very successful. He is resting comfortably at home, and we hope to see him back with us soon.

Broker Management Clinics
Thanks to John Bechtold and members of a committee we created to facilitate the transition from the Department's Broker Audit Clinics to Broker Management Clinics offered by real estate schools, the change is working even better than we had hoped.

As this issue of the Bulletin goes to press, two schools have received approval to present Clinics beginning in November (see the stories on page

11), and many other schools are in the process of obtaining approval.

We developed an Instructor Development Workshop to prepare instructors for the important job of presenting the Clinics. The first workshop was a great success. Forty people attended, and all of them passed a comprehensive, 80-question examination at the conclusion of the Workshop. A second and final Workshop, to be presented later this month, is already "sold out."

In the past, due to limited manpower, the Department was able to present only two Broker Audit Clinics each month, one in Phoenix and another in Tucson. Seating was very limited and the schedule simply could not accommodate the number of brokers who were required to attend. Now that Clinics are offered by schools, six are scheduled during November in Phoenix and another two in Tucson. The number will be growing.

We have announced the date and time of these Clinics on the Late-Breaking News Page on our Web site, and more Clinics will be announced as other schools become approved.

Database Access Service
Our computer systems wizard Kevin Goode did what I thought was impossible. He made up-to-the-second public information in the Department's computer database available to licensees and the public, and he did it without spending money on software

or hardware.

Now, anyone with internet access may see the same data that is available to ADRE personnel. Data that is not a matter of public information — Social Security Numbers and home addresses and telephone numbers, for instance — can not be seen by people outside the Department.

I'm sure both licensees and the public will appreciate being able to obtain all possible public information about a licensed individual or entity in just a few seconds any time of day or night. Kevin, you've done a great job.

My congratulations go also to Kurt LaBotz who is usually the first to greet you when you visit our Customer Services Division.

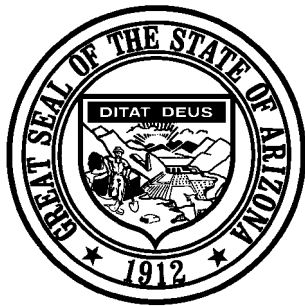
Kurt decided he'd do a better job of assisting you if he obtained a real estate salesperson's license. He passed the State exam with flying colors. Atta boy Kurt.

New Legislation

Once again, the Department will be supporting a bill in the upcoming Legislature. As soon as the November 7th election results are final, Roy Tanney, our legislative liaison, will be talking with various members of the Legislature to procure a sponsor.

The bill in its current form has been mailed to stakeholders for reaction and input. If you haven't received a copy and would like one, just let me know.

Happy Halloween!



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2000 Schedule of Broker Audit Clinics

A.R.S. § 32-2136 requires all newly licensed real estate brokers to attend a Broker Audit Clinic presented by the Department within 90 days of issuance of their original broker's license. *Effective July 21, 1997, all designated real estate brokers must also attend a Broker Audit Clinic within 90 days after becoming a designated broker unless the broker has attended an audit clinic during the broker's current licensing period.* All designated brokers shall attend a broker audit clinic once during every two-year period after their initial attendance. (See note below.)

Seating is limited and reservations are required. To make a reservation for a Phoenix clinic, call the Department's Customer Services Division at (602) 468-1414, extension 100. In Tucson, call (520) 628-6940. Those who fail to make reservations will be turned away if seating is not available. Brokers who attend will receive three hours of continuing education credit in the category of Commissioner's Standards.

The following is the schedule of Clinics to be offered in Phoenix and Tucson during the remainder of 2000. All seats in these clinics have been reserved. No seats are available.

PHOENIX

Industrial Commission Auditorium
800 W. Washington

1 p.m. to 4 p.m.

October 19

TUCSON

State Office Building
400 W. Congress
Room 222

1 p.m. to 4 p.m.

October 18

Note: Beginning November 1, the Broker Audit Clinic will be known as the Broker Management Clinic pursuant to A.R.S. § 32-2136 and will be offered only by approved Arizona real estate schools. Effective July 18, 2000, all designated brokers are required to attend a Clinic *once during every two-year licensing period* after their initial attendance rather than once every four years as before. See story on page 11.

**The mission of the
Arizona Department of Real Estate
is to safeguard and promote the public interest
through timely and capable assistance,
fair and balanced regulation,
and sound and effective education.**

ADMINISTRATIVE ACTIONS

COMMISSIONER'S ORDER

99A-148

**Loewen Group International, Inc., a Delaware Corporation
Burnaby, BC, Canada**

DATE OF ORDER: October 4, 2000

FINDINGS OF FACT: Respondent is a Delaware for-profit corporation doing business in Arizona.

Catholic Cemeteries is an Arizona corporation sole under the authority of the Catholic Diocese of Tucson. Catholic Cemeteries owns two cemeteries in Tucson known as the Holy Hope Cemetery and All Faiths Memorial Park.

On March 13, 1998, Catholic Cemeteries entered into an Asset Management Agreement with Loewen in which Catholic Cemeteries engaged Loewen "to exercise exclusive management responsibilities an authority for the day-to-day operation of the cemeteries.

When Loewen commenced management of the cemeteries, it failed to obtain a Certificate of Authority under A.R.S. § 32-32-2194.18, and neither Loewen nor any of its sales staff obtained real estate or cemetery broker or salesperson's licenses. Loewen, through its agents and/or employees offered cemetery plots for sale without giving notice to the Commissioner as required under A.R.S. § 32-2194.01.

Loewen asserted that Catholic Cemeteries is a corporation sole administering temporalities of the Catholic Church, and because the cemeteries are "organized, controlled and operated" by Catholic Cemeteries, Loewen is exempt under A.R.S. § 32-2194(1) from regulation by the Department.

The Administrative Law Judge concluded that Loewen failed to establish sufficient credible evidence to support its defense.

DISPOSITION: Loewen is required to apply for and obtain a Certificate of Authority and otherwise comply with the requirements of A.R.S. §§ 32-2194.01 and 32-2194.18 prior to transacting any further business in, or selling or offering to sell cemetery plots in, Holy Hope Cemetery and/or All Faiths Memorial Park. Loewen, including its employees and/or agents, as applicable, must apply for and obtain a cemetery broker and/or salesperson's license, and to comply with all other provisions of Arizona Revised Statutes, Title 32, Chapter 20.

CONSENT ORDERS

00A016

**Consent order of Donald D. Mills in the matter of the real estate salesperson's license of Sharon Fix and Donald David Mills
Hartville, OH**

DATE OF ORDER: August 8, 2000

FINDINGS OF FACT: Mills was issued an original real estate license in August 1995. His license expired on August 31, 1999.

At all time material to this matter, Mills was employed as a real estate salesperson with Dan Schwartz Realty, Inc. (Schwartz Realty). He was severed from Schwartz Realty on March 4, 1999.

At all times material to this matter, Sharon Fix was licensed as a real estate sales person and was also employed by Schwartz Realty and was severed on April 1, 1999.

On December 4, 1998, Fix executed an Exclusive Right to Sell/Rent agreement for a home and property owned by Sharon Rowe in Glendale. The listing stated a rental amount of \$1,095 per month. In addition, Rowe and Fix signed an agency disclo-

sure agreement wherein Fix elected to represent Rowe exclusively unless a dual agreement was executed. Fix and Mills worked as a team on the listing and in their contacts with Rowe.

On January 15, 1999, Mills telephoned Rowe and persuaded her to allow Nick Logan to take possession of the property, even though Mills had not obtained written authorization from Rowe or an executed rental/lease agreement stating specific, agreed-upon terms. Mills assured Rowe that Logan's deposit and rent monies had been mailed to her and would arrive in two days.

Between January 18 and February 1, 1999, Rowe contacted Mills on several occasions because she had not received a written rental agreement or the deposit or rent monies. Mills made excuses to Rowe why no monies has been received, and each time Mills assured Rowe that the money was on the way.

On February 1, 1999, Rowe told Mills to start the eviction process to remove Logan from the property. On February 5, 1999, Mills told Rowe that a separate firm used by his company had served Logan with a notice of eviction. Mills told Rowe he would fax her a copy of the eviction documents. Rowe did not receive a copy of the documents.

Rowe did not receive a faxed copy of the proposed Residential Rental Agreement dated January 16, 1999 until February 7, 1999 when Mills faxed a copy to her. The agreement was authored by Mills and listed the tenants as Nicholas Logan and Carleen May. The agreement provided for an earnest money wire deposit of \$2,226, shown as received by Mills, a rental amount of \$1,095 per month for the time period of January 16, 1999 through January 31, 2000.

Mills collected only a total of \$1,000 through the transfer of money wired to the trust account of Schwartz Realty, even though the proposed agreement acknowledges receipt of \$2,226 earnest money. Subsequent to receiving this faxed agreement, Rowe received several calls from Mills insisting that Rowe sign the document. Rowe refused to sign because Mills had not sent her the payments he said he had, and that were required by the terms of the agreement.

From February 8, 1999, Rowe had the electricity and water to the property disconnected because of Mills' failure to forward the deposit and rent monies, and was forced to hire an attorney to handle eviction proceedings. Shortly thereafter, Mills returned the keys for the property to Rowe's attorney.

VIOLATIONS: Mills' conduct and actions constitute a violation of his fiduciary duties to act in Rowe's best interests, failure to deal fairly with all parties to the transaction, and failure to promptly submit the offer to purchase or lease to Rowe within the meaning of A.A.C. R4-28-1101(A) and A.A.C. R4-28-802(B), respectively, all in violation of A.R.S. § 32-2153(A)(3). Mills conduct constitutes making false promises to influence, persuade or induce, in violation of A.R.S. § 32-2153(B)(4). DISPOSITION: Mills' real estate salesperson's license revoked. Mills shall not reapply for an Arizona real estate license for five years from the date of entry of this Order.

99A-138

**Lawrence P. Like
Scottsdale**

DATE OF ORDER: AUGUST 4, 2000

FINDINGS OF FACT: Respondent was issued a real estate salesperson's license on February 28, 1994. That license expires on February 28, 2001. Respon-

dent is presently and at all times material herein employed as a real estate salesperson by Re/Max Excalibur Realty. (Excalibur).

G. Richard Smith was at all times material herein the president of the Arizona Glaucoma Institute (AGI), a subsidiary of Coronado Industries, Inc. (Coronado), a Nevada corporation. Richard Smith, Robert Smith and Gary Smith are brothers, and are each officers of Coronado. At all times material herein, Robert and Gary Smith held no official position with AGI.

On February 11, 1999, Like and AGI, through Richard Smith, entered an Exclusive Right to Sell Listing contract (Listing Agreement) concerning property located in Scottsdale. The listing price on the property was \$875,000. The Listing Agreement's expiration date was June 11, 1999.

At the time, the property was owned by Dr. Leo Bores. AGI occupied to property under a lease agreement with Bores which included an option to purchase for \$400,000. The option expired on July 31, 1999. AGI intended to exercise the Option to purchase the property, then sell it, with Bores' approval.

During the listing period, Richard and Robert Smith held several telephone conversations with Like concerning the status of the listing. During the first month of the listing period, Like showed the property to prospective buyers but received only one letter of intent which was rejected by AGI.

Sometime during the early party of May 1999, Like advised Robert Smith that there had been no inquiries on the property and that AGI should sell its option to purchase. Like represented that he had a client who would be interested in purchasing the option for \$60,000. Richard Smith advised Like that AGI was interested, but only at a higher price.

On June 2, 1999, Dries Bosch, a real estate agent employed by Dan Schwartz Realty, submitted an offer to purchase the property, on behalf of the Council for Chiropractic Education (CCE), to Like at Excalibur. The offer was for \$500,000. CCE's offer included all the furniture that was in the building. Dr. Paul Walker was the lawful representative of CCE.

Like failed to submit the offer in writing by CCE to AGI or any of the Smith brothers.

On June 3, 1999, Like submitted a counteroffer on behalf of Kensington Custom Homes, Inc. to Bosch for a selling price of \$549,000. The counteroffer further provided that most of the furniture in the building would be removed by AGI and be replaced by furniture owned by Like. The counteroffer further provided that after removal of contingencies, CCE would deposit a non-refundable down payment of \$70,000 into escrow. In the event CCE failed to perform, that money would be forfeited to Kensington.

Like and Bosch exchanged several counteroffers. Like did not disclose these counteroffers or the status of his ongoing negotiations with Bosch and Walker to AGI or the Smiths.

On June 4, 1999, CCE, through Walker, submitted a counter offer to Like with a selling price of \$545,000 and a closing date of June 22, 1999.

Later that day, Like submitted a three-page counteroffer that disclosed, in part, "Seller is Kensington Custom Homes, Inc. Dr. Leo Bores sold option on property. Notarized letter from Dr. Leo Bores confirming sale of option will be at designated Title Company." CCE did not accept this counteroffer.

In or around the last week of the listing period, Like contacted Smith and again conveyed an

Continued on page 6

Continued from page 5

offer from Kensington to purchase the option for \$60,000. Richard Smith declined that offer, but advised Like that AGI would be interested in selling the option for \$90,000.

Shortly thereafter, Like contacted Richard Smith and conveyed an offer from Kensington to purchase the option for \$65,000. Like represented that the offer must be accepted on that day, otherwise it would be retracted. Like did not disclose CCD's offer on the property to Richard Smith.

On June 4, 1999, Like, at the request of Robert Smith, submitted to AGI a letter of intent by Kensington, signed by Donald Lundell, to purchase the option. The proposed price was \$65,000. The proposed closing date, at which time the \$65,000 became due and payable, was June 22, 1999. Like represented that the offer must be accepted that day, otherwise it would be retracted.

Richard Smith countersigned the letter of intent and modified the proposed sale price of the option to \$70,000. At the time Richard Smith signed the counteroffer to sell the option, Like had not told him about the offer from CCE.

Kensington was at all times material herein a Nevada corporation owned by Suzanne Kensington as her sole and separate property. Suzanne Kensington is, and was at all times material herein, Like's wife. Donald Lundell is, and was at all times material herein, the father of Suzanne Kensington and Like's father-in-law. Like did not disclose these facts to Bosch or Walker.

On June 5, 1999, Richard Smith learned through a telephone conversation with Walker that CCE had negotiated with Like to purchase the property from Kensington.

On June 7, 1999, Like contacted Richard Smith to discuss removing contingencies on the purchase of the option. Like did not disclose CCE's offer on the property. Richard Smith discussed his earlier telephone conversation with Walker to Like. According to Richard and Robert Smith, Like stated that he had never heard of Walker and that his friend at Kensington might be selling the property. According to Like, he apologized to Richard Smith for not previously disclosing CCE's offer to him.

On June 7, 1999, CCE and Bosch ceased negotiations with Like and RE/Max Excalibur. Thereafter, CCE entered an agreement to purchase the property from Bores. Under the agreement, Bores received the \$400,000 option price from AGI, and AGI received the sale proceeds. According to Richard Smith, AGI netted approximately \$109,000 from the transaction.

Prior to closing on June 9, 1999, AGI, through Richard Smith, agreed to pay a \$8,175 reduced commission to Like and Re/Max Excalibur, in exchange for a release from the listing agreement and a release of liability for Like and Re/Max Excalibur, and the sale closed.

In mitigation, Like attests that he presented the CCE offer verbally to Robert Smith, but not to Richard Smith. Robert Smith denies this. VIOLATIONS: Like breached his fiduciary duty and failed to protect and promote his client's interests, within the meaning of A.A.C. R4-28-1101(A). He acted for more than one party in a transaction without the prior written consent of all parties to the transaction, in violation of A.R.S. § 32-2153(A)(2) and A.A.C. R4-28-1101(F).

Like failed to submit a written offer to purchase the listed property to his client, in violation of A.A.C. R4-28-802(B). He disregarded or violated provisions of Arizona Revised Statutes, Title 32, Chapter 20 and the Commissioner's Rules, in violation of A.R.S. § 32-2153(A)(3). DISPOSITION: Like's real estate salesperson's license shall be suspended for 45 days, imposed retroactively to begin on July 25, 2000. Like shall

pay a civil penalty in the amount of \$1,000.

99A-116
Timothy J. Parker
Prescott

DATE OF ORDER: August 7, 2000

FINDINGS OF FACT: On September 2, 1994, Parker was issued a real estate salesperson's license. That license will expire September 30, 2000.

On December 17, 1999, Parker submitted an original application for a real estate broker's license.

On February 10, 1998, Parker was arrested by the Maricopa County Sheriff's Office for Contributing to the Delinquency of Minors. On September 28, 1998, Parker was found guilty. He appealed the conviction, and on April 5, 1999, the conviction was affirmed.

On January 10, 2000, the Department notified Parker of its intent to deny his application for a broker's license. Parker requested an administrative hearing to appeal the Department's decision. On March 16, 2000, an Administrative Law Judge issued an order vacating the hearing, per stipulations by Parker and the Department, to provide ample time to negotiate a settlement.

VIOLATIONS: Parker was found guilty and admits that he committed a misdemeanor offense within the contemplation of A.R.S. §§ 32-2153(B)(2) and (A)(3).

DISPOSITION: Parker shall complete 15 hours of continuing education, in addition to hours required for renewal, subject to the approval and under the supervision of the Department's Compliance Officer.

Parker shall pay a civil penalty in the amount of \$500.

Parker shall receive a broker's license, which shall be on a provisional status for one year from the date of this Order, and which shall become active only after:

- i. Parker severs his salesperson's license with Prescott Pines Realty;
- ii. Parker has delivered his salesperson's license to the Department;
- iii. Parker shall not reactivate nor renew his salesperson's license through its effective period nor the renewal right period;
- iv. Parker shall act only as an associate broker for the one-year provisional license period, and;
- v. Parker shall accomplish being hired by the designated broker of his choice (for activation of his broker's license) and complete the filing and notification process thereof to the Department.

After the satisfactory conclusion of the one-year provisional license period, Parker shall have the right to change his status to that of a designated broker.

00A-048
Martin M. Abitzsch
Peoria

DATE OF ORDER: August 14, 2000

FINDINGS OF FACT: In his June 10, 1999 application for a real estate salesperson's license, Respondent failed to disclose a September 8, 1998 domestic violence conviction in Peoria Municipal Court, and an April 27, 1999 domestic violence conviction in Peoria Municipal Court.

VIOLATIONS: Respondent's failure to disclose the convictions constitutes procuring or attempting to procure a license by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1). Respondent was convicted of a crime of moral turpitude or other like offense, within the meaning of A.R.S. § 32-2153(B)(2). His conduct tends to show he is not a person of honesty, truthfulness or good character, within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Respondent's real estate salesperson's license is suspended for 90 days upon entry of this Order. Respondent to pay a civil penalty in the amount of \$500. Respondent to attend nine hours of approved continuing education, in addition to hours required for renewal, in the categories of Commissioner's Standards, Agency Law, Contract Law and Real Estate Legal Issues.

son's license is suspended for 90 days upon entry of this Order. Respondent to pay a civil penalty in the amount of \$500. Respondent to attend nine hours of approved continuing education, in addition to hours required for renewal, in the categories of Commissioner's Standards, Agency Law, Contract Law and Real Estate Legal Issues.

00A-059
Chester R. Byrd
Phoenix

DATE OF ORDER: August 14, 2000

FINDINGS OF FACT: In his December 30, 1998 application for a real estate salesperson's license, Respondent failed to disclose a September 14, 1999 New Hampshire conviction for Conspiracy to Sell a Controlled Drug and Dispensing a Controlled Drug (2 ounces of crack cocaine). Respondent was sentenced to two to four years in the New Hampshire State Prison with all but 120 day suspended subject to successful completion of the special Alternative Incarceration (Shock Incarceration) Program. The Court further ordered that Respondent be placed on supervised probation for five years after successful completion of the program.

On September 6, 1995, a Violation of Probation Report was issued charging Respondent with failure to report as ordered, failure to receive probation/parole officer's permission prior to changing residence and employment, failure to notify probation/parole officer of police contact, failure to be of good conduct, failure to follow probation/parole officer's instructions, and failure to follow ISP curfew.

On November 28, 1995, Respondent was charged to be in violation of several other probation rules.

On December 9, 1995, Respondent pleaded guilty to the probation violations. His probation was terminated and he was sentenced to serve 12 months in the Rockingham County House of Corrections. The plea agreement also stipulated that Respondent would move to Arizona to live with his parents after his release.

VIOLATIONS: Respondent procured or attempted to procure a license by filing an original application which was false and misleading, in violation of A.R.S. § 32-2153(B)(1). Respondent was convicted of a felony and/or a crime of moral turpitude or other like offense, within the meaning of A.R.S. § 32-2153(B)(2). His conduct tends to show that he may not be a person of honesty, truthfulness and good character within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Respondent's real estate salesperson's license is revoked.

00A-082
Russell A. Hunt
Tempe

DATE OF ORDER: August 15, 2000

FINDINGS OF FACT: In his May 15, 2000 original application for a real estate salesperson's license, Petitioner disclosed the following convictions: 1994, Disturbing the Peace and Public Intoxication; 1995, Public Intoxication; 1995, Resisting an Officer; 1996, Public Intoxication; 1997 DUI; 1998, DUI and Sell/Furnish Alcohol to a Minor; and 1998, False Imprisonment.

Petitioner was placed on misdemeanor probation for four years due to the 1998 DUI and Sell/Furnish Alcohol to a Minor conviction, and three years misdemeanor probation for the 1998 False Imprisonment conviction. His misdemeanor probation ends February 20, 2002.

VIOLATIONS: Petitioner has shown that he is not a person of good character within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: The Commissioner shall issue Petitioner a two-year provisional real estate

salesperson's license upon entry of this Order. Under this license, Petitioner shall comply with the following terms and conditions during all periods of active and inactive licensure:

a. Each designated broker who wishes to employ Petitioner shall file with the Department's Compliance Officer a signed statement certifying that the broker has received and read a copy of this Order and agrees to act as Petitioner's practice monitor. The practice monitor shall submit quarterly written reports to the Compliance Officer attesting to Petitioner's workload as well as the quality of his services and client relationships. The practice monitor shall report any behavior or conduct which violates real estate statutes or Commissioner's Rules. In the event that the Petitioner shall lose his practice monitor for any reason, he shall advise the Compliance Officer without delay, and shall obtain a new practice monitor under the terms and conditions of this paragraph within 30 days or, in the event he places his license on inactive status or his broker terminates him, then upon license reactivation.

b. If Petitioner places his license on inactive status, or allows the license to expire, the practice monitor shall not be required unless or until Petitioner applies for active-status licensure or for a renewed license to be issued on active status.

c. Petitioner shall completely abstain from the use of alcohol, illegal drugs or controlled substances unless taken pursuant to a valid prescription and order of a medical doctor.

d. Petitioner shall submit to body fluid tests or breath tests, randomly drawn, not to exceed two per month, at the request and election of the Compliance Officer.

e. If Petitioner places his license on inactive status, the requirements of sections c and d above shall continue, uninterrupted, for the full two-year term of the provisional license, or until such time as Petitioner no longer holds a license from the Department, whichever comes first.

99A-143

Valerie S. Skiba
Phoenix

DATE OF ORDER: August 23, 2000

FINDINGS OF FACT: Respondent was issued an original real estate salesperson's license on August 5, 1996. That license expired August 31, 2000.

On August 16, 1999, Respondent timely disclosed to the Department that she had been convicted of Driving on a Restricted License While Impaired to the Slightest Degree, a felony.

On October 15, 1998, Respondent was convicted in Phoenix Municipal Court of DUI and DUI with a BAC of 0.10 or higher.

Respondent failed to notify the Commissioner, within 10 days, of her conviction.

On August 16, 1999, Respondent was convicted in Maricopa County Superior Court of Aggravated DUI, a class 4 felony. The court placed Respondent on probation for a period of five years commencing August 16, 1999. She will remain on probation until August 16, 2004. She was sentenced to prison for four months, commencing August 16, 1999.

VIOLATIONS: Respondent failed to notify the Commissioner, within 10 days, of her October 15, 1998 conviction for DUI, in violation of A.A.C. R4-28-301(F). She disregarded or violated the provisions of Arizona Revised Statutes, Title 32, Chapter 20, and the Commissioner's Rules, in violation of A.R.S. § 32-2153(A)(3). She has been convicted of a felony in violation of A.R.S. § 32-2153(B)(2). DISPOSITION: Respondent's real estate salesperson's license is suspended for 14 days effective upon entry of this Order.

The Commissioner shall issue Respondent a

two-year provisional real estate salesperson's license. Respondent shall comply with the following terms and conditions during all periods of active and inactive status:

a. She shall abstain completely from the use of alcohol, illegal drugs or controlled substances unless taken pursuant to a valid prescription and orders of a medical doctor.

b. She shall submit to body fluid tests or breath tests, randomly drawn, not to exceed two per month, at the request of the Department's Compliance Officer.

c. Any body fluid test which tests positive shall constitute grounds to summarily suspend Respondent's license and will constitute criminal contempt pursuant to Superior Court Judge Cole's Order granting Respondent early termination from probation.

d. Respondent shall continue to participate in the Concepts for Change, Inc. program on the same terms as those under her probation.

e. Respondent shall abide by any restrictions on her driving privileges as her current position does not require her to either transport or meet clients.

Respondent shall pay a civil penalty in the amount of \$1,000 and shall take six hours of approved continuing education, in addition to hours required for license renewal, in the category of Commissioner's Standards.

00A-017

Connie Brown
Scottsdale

DATE OF ORDER: August 23, 2000

FINDINGS OF FACT: On January 10, 2000, Petitioner submitted an original application for a real estate salesperson's license and disclosed a DUI conviction and a prior suspension/revocation of her California real estate license (with subsequent granting of right to a restricted license).

On March 20, 1972, Petitioner received a real estate salesperson's license from the California Department of Real Estate. Petitioner had approximately 15 years of experience acting as a licensed sales person in California.

On June 8, 1987, the California Recover Fund made a payment of \$20,000 due to a claim against Petitioner and other parties. Petitioner's California real estate salesperson's license was suspended. Both acts were due to a disciplinary action arising out of a transaction in which Petitioner became involved known as the "Duques." The Duques were represented by then licensee Janette Young. Young requested Petitioner to assist her in selling a certain parcel of property belonging to the Duques. The Duques became dissatisfied with their representation by Young and subsequently sued the parties.

On March 4, 1989, the suspended license of Petitioner was revoked and she was given the right to a restricted salesperson's license.

As a condition precedent to Petitioner receiving a restricted salesperson's license in California, Petitioner was required to pay the Recovery Fund \$20,000. Petitioner paid the money.

On August 28, 1998, a DUI complaint was filed against Petitioner in California. She was found guilty with one prior conviction and on May 3, 1999 was sentenced, among other items, not to drive an automobile for three years.

On March 30, 2000, Commissioner Jerry Holt signed a Consent Order which provided Petitioner the right to receive the equivalent of a two-year provisional license provided she deliver to the Department a \$20,000 surety bond.

Petitioner has attempted to acquire the bond with no success. This inability to acquire the bond has, in essence, negated Petitioner's ability to act as a licensed salesperson which was not the intent of

the Department in view of the mitigating factors that Petitioner had previously paid back the California Recovery Fund and receive the right to a restricted license in California.

DISPOSITION: The March Consent Order is modified to state that the requirement of surety bond shall mean a surety bond or certificate of deposit. The amount shall not be less than \$2,500 with an effective period of not less than three years of active licensure of Petitioner with the Department.

The March Consent Order is modified to state that the license granted Petitioner is a provisional salesperson's license for two years, subject to the following conditions for three years of active licensure:

a. Each designated broker who wishes to employ Petitioner shall file with the Department's Compliance Officer a signed statement certifying that the broker has received and read a copy of this Order and agrees to act as Petitioner's practice monitor. The practice monitor shall submit quarterly written reports to the Compliance Officer attesting to Petitioner's workload as well as the quality of his services and client relationships. The practice monitor shall report any behavior or conduct which violates real estate statutes or Commissioner's Rules.

b. Prior to activating her license, Petitioner shall post a surety bond or certificate of deposit in form and terms acceptable to the Commissioner.

c. The bond or deposit shall be for not less than \$2,500.

d. If Petitioner places her license on inactive status, or allow the license to expire, the bond or deposit shall not be required unless or until Petitioner applies for active-status licensure or for a renewed license to be issued on active status.

00A-024

Brandon E. Mena
Phoenix

DATE OF ORDER: August 23, 2000

FINDINGS OF FACT: On April 14, 1999, Gloria and Miguel Leon (Leon) entered into a Buyer-Broker Exclusive Agreement with Respondent. Shortly after, and in relation to the Agreement, Leon issued Respondent a check for \$5000 for broker fees or closing costs and attests that she delivered \$165 in cash to Respondent for a credit check. Respondent acknowledged receiving \$137 in cash, not \$165, from Leon for the purpose of document preparation associated with Leon's preliminary mortgage application.

Respondent acknowledges that he received the \$137 as compensation for rendering services associated with a preliminary loan application.

Respondent was not licensed pursuant to Title 6, Chapter 9, Arizona Revised Statutes [statutes regulating mortgage brokers and mortgage bankers] nor an employee, officer or partner of a corporation or partnership licensed pursuant thereto.

VIOLATIONS: Respondent collected compensation for rendering services in negotiating loans secured by real property without being properly licensed to do so, in violation of A.R.S. § 32-2155(C)(1).

DISPOSITION: Respondent to pay a civil penalty in the amount of \$500. Respondent to attend six hours of approved continuing education, in addition to hours required for license renewal, in the categories of Commissioner's Standards, Contract Law or Real Estate Legal Issues.

00A-049

Robert V. Encinas
Glendale

DATE OF ORDER: August 24, 2000

FINDINGS OF FACT: Respondent was issued an original real estate salesperson's license on Febru-

ary 14, 1989. In 1992 and 1994, Respondent was employed as a real estate salesperson by designated broker Patsy J. Elliott and Diamond Realty Commercial, Inc.

On November 24, 1003, Respondent wrote a purchase contract on behalf of Maria de Jesus Peniagua and her son to purchase property in Phoenix for \$48,000 whereby buyer would assume the existing mortgage. The contract acknowledged receipt of \$1,500 in cash as earnest money from the buyer.

Respondent later determined that the buyers could not qualify for financing and sought assistance from Elliott on how to proceed. Elliott suggested a transaction utilizing a "wrap" so buyer would not have to qualify. Respondent was inexperienced in "wraps," and Elliott directed him to another Diamond salesperson, Robert Anthony, for assistance.

On December 14, 1993, Respondent wrote a new purchase contract on behalf of buyers for \$47,000 which required a \$3,000 earnest money deposit and used a "wrap" loan to finance the balance.

On December 27, 1993, buyer and seller executed an agreement for sale whereby buyer assumed the existing indebtedness on the property, which allegedly included a second deed of trust owed to Elaine Larson.

Respondent accepted payment of \$3,000 drawn payable to Elaine Larson. Respondent and Elliott never opened escrow, the seller never signed the required documents, and no instrument was recorded conveying title to the buyers.

Respondent and Elliott failed to hold buyers' money in trust and conveyed it to Larson outside of escrow.

Respondent affirmatively alleges the following mitigating factors:

- a. He attempted to deliver the \$3,000 down payment to a title company, but the title company would not accept it.
- b. Other licensee settled with the buyers for \$2,500.
- c. Respondent refunded \$1,000 to buyers.
- d. Both Respondent and the buyer relied on the knowledge and expertise of Elliott and Anthony.

VIOLATIONS: Respondent failed to account for or remit monies within a reasonable time as required by A.R.S. § 32-2153(A)(9).

DISPOSITION: Respondents' real estate salesperson's license suspended for 10 days beginning upon entry of this Order. Respondent to pay a civil penalty in the amount of \$100.

99A-101

Alice May Hazell, dba De Grazia Realty Yuma

DATE OF ORDER: August 31, 2000

FINDINGS OF FACT: Respondent was originally issued a real estate salesperson's license on March 27, 1993. On December 30, 1997 she was issued an original real estate broker's license. She is currently a self-employed real estate broker doing business as De Grazia Realty. That license expires December 31, 2001.

From November 3, 1994 to September 9, 1997, Respondent was employed as a real estate salesperson by Roadrunner Realty of Yuma, Inc. At all times material hereto, Maxine S. Boffs was the designated broker for Roadrunner.

On September 9, 1997, Respondent was severed by Boggs. On September 18, 1997, Boggs filed a complaint with the Yuma Police Department against Respondent alleging embezzlement of property management and rental fees from the trust account.

On November 18, 1998, a Department auditor conducted a routine audit of Roadrunner. Boggs advised the auditor that Respondent embezzled funds

from Roadrunner's property management trust account. Boggs further advised that she had reported the matter to the Yuma Police Department and that the matter was under investigation.

On December 11, 1998, Boggs submitted a statement and documentation to the Department regarding Respondent in response to the Department's request for further information.

Boggs stated that in September of 1997 she discovered a shortage in her trust account of approximately \$52,000. Boggs reimbursed the trust account with her personal funds.

On January 25 and 26, 1999, a Department auditor/investigator conducted a re-audit of Roadrunner. The re-audit confirmed that the trust account was in balance.

On January 26, 1999, the auditor/investigator met with Detective James Hohl who confirmed that the matter was under investigation.

On March 23, 1999, another Department investigator met with Detective Hohl regarding the embezzlement. Hohl advised that Respondent wrote checks and cashed them, entering false information on the check register stubs. He further advised that Respondent had taken money orders written by tenants, converted the money orders to herself and then cashed them at the local Quick Cash in Yuma. Hohl obtained a list of all the money orders and cashiers checks totaling approximately \$36,000 that Respondent converted and cashed at Quick Cash.

The department obtained from Norwest Bank copies of five money orders in the total amount of \$2,040 that were made payable to Roadrunner, that were endorsed "Roadrunner Realty" by Respondent, then cashed at Quick Cash.

Hohl obtained copies of six money orders from Bank One. The money orders were purchased by tenants, but Hazel made herself the payee on three of them and cashed the money orders in the total amount of \$530 at Quick Cash.

The Department obtain copies of six money orders in the total amount of \$1,199 which were made payable to Roadrunner Realty then cashed by Respondent a Quick Cash. Further, Hohl discovered 10 checks in the total amount of \$4,437.50 that were written endorsed and cashed by Respondent where the "pay to the order of" line was left blank or payable to Cash, with the corresponding register stubs falsely indicating that the checks were made payable to various individuals.

Hohl referred the case to the Yuma County Attorney's Office for criminal prosecution.

On June 10, 1998, the Yuma Police Department conducted an interview with Vianney Alvarez in conjunction with the criminal investigation of Respondent. Alvarez was the supervisor of Quick Cash where Respondent cashed money orders and checks. Alvarez stated she was familiar with Respondent as she had been coming into Quick Cash for a couple of years to cash checks. Alvarez also stated that the last time she saw Respondent was on November 26, 1997, when Respondent cashed two personal checks for a total of \$925. The checks were returned for insufficient funds.

VIOLATIONS: Respondent failed, within a reasonable time, to remit monies to the rightful owner in violation of A.R.S. § 32-2153(A)(9). She converted money belonging to Roadrunner Realty to herself in violation of A.R.S. § 32-2153(A)(16). She, at some material times, failed to maintain a complete record of each transaction which comes within the provisions of Arizona Revised Statutes, Title 32, Chapter 20 and in violation of A.R.S. § 32-2153(A)(18).

Respondent's conduct and actions show she is not a person of truthfulness and good character, in violation of A.R.S. § 32-2153(B)(7). Respondent has violated state laws that relate to real estate and that involve dishonest dealings in violation of A.R.S. § 32-2153(B)(10).

DISPOSITION: Respondent's real estate broker's license is revoked effective on entry of this order.

00A-079

Steve Dniel Valentine

Phoenix

DATE OF ORDER: September 1, 2000

FINDINGS OF FACT: In his July 19, 1999 application for an original real estate salesperson's license, Respondent failed to disclose a October 1996 conviction for Solicitation to Commit Forgery, a class 6 undesignated felony. Respondent was placed on three years' probation and ordered to pay an assessment of \$2,160. At the time of sentencing, the Court designated the offense a misdemeanor. Respondent was discharged from probation on October 25, 1999.

VIOLATIONS: Respondent's failure to disclose the conviction constitutes procuring or attempting to procure a license by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(3). Respondent was convicted of a felony or of the crime of forgery, theft, extortion, conspiracy to defraud, a crime of moral turpitude or other like offense within the meaning of A.R.S. § 32-2153(B)(2).

DISPOSITION: Respondent's real estate salesperson's license suspended for 30 days to begin upon entry of this Order.

Respondent to pay a civil penalty in the amount of \$1,000.

Respondent to attend nine hours of approved continuing education, in addition to hours required for license renewal, in the categories of Commissioner's Standards, Contract Law, or Real Estate Legal Issues.

00A-077

Paul L. Mann

Scottsdale

DATE OF ORDER: September 1, 2000

FINDINGS OF FACT: On April 20, 2000, Respondent file a late renewal application for an inactive real estate salesperson's license. His previous license expired April 30, 1999.

In his application, Respondent answered "Yes" to the question, "Have you...had any restriction, suspension, denial or revocation of a professional or occupational license...?" While Respondent provided a "Yes" answer, he failed to provide sufficient information of prior adverse actions involving an occupational license, as required by the questionnaire.

The Department determined that Respondent entered an Arizona Board of Appraisal Consent Agreement and Order on June 2, 1997, in which his Certified General Real Estate Appraiser certificate was suspended for one month. In accordance with the Consent Agreement, Respondent voluntarily surrendered his Real Estate Appraiser's certificate on June 4, 1997.

While Respondent did disclose the Board of Appraisal's imposed probationary term and a scheduled hearing, he failed to notify the Department of the suspension action.

VIOLATIONS: Respondent's failure to timely disclose the consent agreement, suspension action and the surrendering of his certificate in violation of A.R.S. § 32-2153(A)(3), A.A.C. R4-28-301(A)(2)(d) and A.A.C. R4-28-301(F).

DISPOSITION: Respondent's real estate salesperson's license is suspended for 30 days to begin upon entry of this Order. Respondent to pay a civil penalty in the amount of \$500.

00A-057

Albert Hidalgo, aka Albert Carlos Hidalgo Mesa

DATE OF ORDER: September 1, 2000

FINDINGS OF FACT: Respondent obtained an original real estate salesperson's license on May 3, 1993. He renewed the license in 1995, 1997 and on May 28, 1999. That license expires May 31, 2001. He is currently an active licensee employed by Julio A. Hidalgo, dba Julio & Associates.

As a result of a background investigation required in connection with his most recent application for renewal, the Department learned that on April 16, 1991 Respondent was convicted of disorderly conduct (a class 1 misdemeanor) and one count of criminal damage (a class 2 misdemeanor). He failed to disclose the conviction in his original license application. Respondent also failed to submit documents to the Department in connection with its investigation.

In mitigation, Respondent asserts he had difficulty obtaining the requested documents from the respective agencies.

VIOLATIONS: Respondent's failure to cooperate with the Department in its investigation and its requests for documents and information as required by A.R.S. § 32-2108(C)(1) constitutes a violation of A.R.S. § 32-2153(A)(3). His failure to disclose the convictions constitutes procuring or attempting to procure a license by submitting a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1). **DISPOSITION:** Respondent to pay a civil penalty in the amount of \$1,500. Respondent to attend nine hours of approved continuing education classes, in addition to hours required for license renewal, in the categories of Commissioner's Standards, Contract Law and Real Estate Legal Issues.

00A-093

Tom H. Bledsoe, Jr.
Phoenix

DATE OF ORDER: September 5, 2000
FINDINGS OF FACT: In his June 23, 2000 application for an original real estate salesperson's license, Respondent disclosed a 1973 conviction for shoplifting; 1976, 1977 and 1981 convictions for possession of marijuana; a 1979 conviction for littering; and a 1997 charge by the Department of the Treasury, U.S. Customs Service, for possession of 1.7 grams of hashish at the Atlanta International Airport.

VIOLATIONS: Respondent's conduct and actions fail to establish that he is a person of good character within the meaning of A.R.S. § 32-2153(B)(7). **DISPOSITION:** The Commissioner shall issue Respondent a two-year provisional real estate salesperson's license. Respondent shall comply with the following terms and conditions during all periods of active and inactive status:

a. Respondent shall abstain completely from the use of illegal drugs or controlled substances unless taken pursuant to a valid prescription and orders of a medical doctor.

b. Respondent shall submit to body fluid tests randomly drawn, not to exceed two per month, at the request of the Department's Compliance Officer.

c. Any tests which test positive shall constitute grounds to summarily suspend Respondent's license.

d. Within 10 days of employing Respondent, each employing broker shall file with the Compliance Officer a signed statement certifying that the broker has received a copy of this Order and agrees to act as Respondent's practice monitor. The practice monitor shall submit quarterly written reports to the Compliance Officer attesting to Petitioner's workload as well as the quality of his services and client relationships. The practice monitor shall report any behavior or conduct which violates real estate statutes or Commissioner's Rules, or any precepts or standards as prescribed by the National Association of Realtors' Code of Ethics.

00A-056

Robert Ellis Harriott
Phoenix

DATE OF ORDER: September 1, 2000

FINDINGS OF FACT: In September 1994, Respondent applied for and obtained an original real estate salesperson's license. That license expired on September 30, 1996.

On September 7, 1999, Respondent filed another original application for a real estate salesperson's license. In that application he failed to disclose a July 14, 1994 conviction for DUI.

VIOLATIONS: Respondent procured or attempted to procure a license for himself by filing an original application which was false or misleading in violation of A.R.S. § 32-2153(B)(1). His conduct tends to show he is not a person of honesty, truthfulness or good character within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Respondent's real estate salesperson's license is suspended for 30 days upon entry of this Order. Respondent to pay a civil penalty in the amount of \$250.

00A-075

William Sean Beasley
Glendale

DATE OF ORDER: September 7, 2000

FINDINGS OF FACT: In his June 18, 1999 original application for a real estate salesperson's license, Respondent failed to disclose a November 17, 1992 conviction for theft, a class 6 undesignated, non-dangerous and nonrepetitive offense.

VIOLATIONS: Respondent procured or attempted to procure a license for himself by filing an original application which was false or misleading in violation of A.R.S. § 32-2153(B)(1). As a result of his conviction, he is in violation of A.R.S. § 32-2153(B)(2). His conduct tends to show he is not a person of honesty, truthfulness or good character within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Respondent's real estate salesperson's license is suspended for 60 days upon entry of this Order. Respondent to pay a civil penalty in the amount of \$750.

00A-084

Jason Fields
Scottsdale

DATE OF ORDER: September 18, 2000

FINDINGS OF FACT: In his May 22, 2000 original application for a real estate salesperson's license, Petitioner disclosed a 1996 conviction for obstructing justice and a 1998 conviction for theft.

VIOLATIONS: Petitioner has been convicted by the State of Ohio of a crime of theft and/or a crime of moral turpitude or any other like offense in violation of A.R.S. § 32-2153(B)(2). His conduct and actions demonstrate he is not a person of honesty, truthfulness and good character within the meaning of A.R.S. § 32-2153(B)(7). Petitioner violated laws that involve theft in violation of A.R.S. § 32-2153(B)(10).

DISPOSITION: The Commissioner shall issue Petitioner a two-year provisional real estate salesperson's license. Under this license, Petitioner shall comply with the following terms and conditions during all periods of active and inactive status:

a. Petitioner shall obtain and keep in effect a \$25,000 bond for the two-year period.

b. Petitioner's employing broker shall file with the Compliance Officer proof of Professional Liability Protection Insurance in the amount of \$250,000 for each act which covers Petitioner.

c. Petitioner shall attend 15 hours of approved continuing education, in addition to hours required for license renewal, in the areas of Commissioner's Rules, and agency and fiduciary relationships.

d. Within 10 days of employing Respondent, each employing broker shall file with the Compliance Officer a signed statement certifying that the broker has received a copy of this Order and agrees to act as Respondent's practice monitor. The practice monitor shall submit quarterly written reports to the Compliance Officer attesting to Petitioner's workload as well as the quality of his services and client relationships. The practice monitor shall report any behavior or conduct which violates real estate statutes or Commissioner's Rules, or any precepts or standards as prescribed by the National Association of Realtors' Code of Ethics.

00A-080

Mark G. Smith
Ash Fork

DATE OF ORDER: September 20, 2000

FINDINGS OF FACT: In his July 16, 1999 application for a real estate salesperson's license, Petitioner failed to disclose an April 14, 1998 conviction for DUI and Driving on a Suspended License.

VIOLATIONS: Petitioner procured or attempted to procure a license by misrepresentation or deceit within the meaning of A.R.S. § 32-2153(B)(1). His conduct shows he is not a person of good character within the meaning of A.R.S. § 32-2153(B)(7). **DISPOSITION:** Petitioner to pay a civil penalty in the amount of \$1,000.

99A-133

ILX Resorts, Inc.
Phoenix

DATE OF ORDER: September 20, 2000

FINDINGS OF FACT: In 1997, 1998 and 1999, ILX acquired 126 or more time-share estates in the time-share project known as Roundhouse Resort in Pinetop/Lakeside. On August 31, 1998, Premier Vacation Club was granted a third amendment of a time-share public report which included the Roundhouse Resort.

In 1998 ILX published in its "alternatives for lifestyles" magazine that its "sales Center will work toward converting existing Roundhouse owners to membership in Premiere Vacation Club. For information on the fine projects in the ILX family of resorts, call Premier Vacation Club..." and "The option of splitting the time between many resorts versus just Roundhouse has been very well received by the Roundhouse owners."

VIOLATIONS: ILX sent communications to members of the Premiere Vacation Club about Roundhouse Resort prior to receiving the August 31, 1998 Amended Public Report.

DISPOSITION: ILX to pay a civil penalty in the amount of \$3,000.

00A-051

Joseph A. Walker
Glendale

DATE OF ORDER: September 21, 2000

FINDINGS OF FACT: In 1983 Respondent was issued a real estate salesperson's license. Subsequent renewals and the application for a broker's license were approved.

On June 30, 2000 Respondent's self-employed broker's license expired. He is currently an inactive broker with an expired license.

Based upon a complaint received by the Department in November 1999, it was determined that:

a. On June 29, 1998, Petra Sposito, a real estate salesperson hired by Respondent wrote a sales contract for the sale of a house to Ellis Parker. The contract was subsequently modified.

b. The contract does not state that the seller, Scott Walker, was selling the house as owner/builder.

c. Scott Walker is Respondent's son.

d. Scott Walker, while not licensed as a contractor builder with the Registrar of Contractors, built the house and other homes adjacent to the subject property and did not live in the house for the period required to be an exempted builder/seller.

e. Respondent did not disclose all pertinent information in writing to the buyers depriving them from making a more informed decision.

Respondent has assured the Department that he is fully retired and his intention is to stay retired. Respondent asserts that he is living on a small fixed income and that a civil penalty would cause him great difficulty.

VIOLATIONS: As a result of Respondent's failure to disclose in writing all information to the buyers which he possessed that could have materially and adversely affected the transaction, he violated A.R.S. § 2153(A)(3) and A.A.C. R4-28-1101(B). **DISPOSITION:** Respondent's right to renew and/or apply for any real estate license is suspended for four years from the date of entry of this Order.

00A-074

Mark D. Cavan
Phoenix

DATE OF ORDER: September 21, 2000

FINDINGS OF FACT: In his December 1998 original application for a real estate salesperson's license, Petitioner failed to disclose a 1995 plea agreement for Theft, a class 1 misdemeanor, and a 1997 plea agreement for DUI and related matters.

VIOLATIONS Petitioner procured or attempted to procure a license by misrepresentation or deceit within the meaning of A.R.S. § 32-2153(B)(1). Petitioner has shown he is not a person of good character within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Petitioner's real estate salesperson's license is suspended for 30 days beginning with the entry of this Order. Petitioner to pay a civil penalty in the amount of \$700.

00A-025

Alejandro "Alex" Morales and M&M Douglas Real Estate, L.L.C.
Douglas

DATE OF ORDER: September 25, 2000

FINDINGS OF FACT: Morales was originally issued a real estate salesperson's license in January 1984. He was issued a real estate broker's license in January 1989. That license expires on January 31, 2001.

In May 1995, M&M Douglas Real Estate was issued a real estate broker's license. That license expires on May 31, 2001. At all time material to this action, Morales was the designated broker for M&M Real Estate.

COUNT I: On August 14, 1995, Michael Talavera and Guadalupe Talavera (the Talaveras) entered into a Management Agreement with M&M Real Estate and Morales whereby Respondents agreed to manage the Talaveras' property in Douglas. On the same date, the Talaveras entered into a second contract, an Exclusive Listing Agreement, whereby M&M Real Estate and Morales agreed to list the Talaveras property for sale.

On September 28, 1995, Morales prepared a Contract for Sale on behalf of Jesus and Yolanda Gallego (the Gallegos) for the property. The purchase price was \$68,000. There was a restrictive first mortgage on the property in the original amount of \$52,000 payable to the U.S. Department of Agriculture (USDA) or (the FMHA loan).

The contract stated that the Gallegos would pay an earnest money deposit of \$8,500, make an additional payment of \$4,500 on or before October 4, 1995, and make payments to the Talaveras in the amount of \$1,000 per month.

On September 15, 1995, Jesus Gallego paid monies to M&M Real Estate. On September 29, 1995, Gallego paid \$200 in cash to M&M Real Estate and on March 1, 1996 paid \$3,500 in cash to an employee of M&M Real Estate.

On October 5, 1995, Morales wrote a check on his escrow account payable to Fidelity National Title in the amount of \$7,500. Morales directed Fidelity to use \$1,000 from his commission towards the closing costs for the buyer. The Gallegos paid an additional \$600.38 to Fidelity toward the closing costs.

In addition, the Gallegos had an outstanding judgment and tax liens filed against them in the amount of \$6,654.26 that attached to the property. The transaction closed despite the tax liens. Morales never informed the Talaveras of the liens.

Morales wrote a check to Fidelity in the amount of \$7,500 from the M&M Trust Account. He received a commission from Fidelity in the amount of \$3,080. Morales failed to keep adequate records of all funds deposited.

Morales breached his fiduciary duty to his clients, did not protect and promote their interests and did not deal fairly with all parties to this transaction within the meaning of A.A.C. R4-28-1101(A).

Morales did not disclose in writing to all parties to these transactions information he possessed that materially and adversely affected the consideration paid by the parties as required by A.A.C. R4-28-1101(B).

Morales' conduct constitutes violations of Arizona Revised Statutes, Title 32, Chapter 20 and the Commissioner's Rules, in violation of A.R.S. § 32-2153(A)(3).

Morales failed to keep adequate records of funds deposited with him relating to the real estate transactions described above in violation of A.R.S. § 32-2153(A)(15).

COUNT II: On June 4, 1996, Morales facilitated an offer to sell Gallegos' interest in the same property to Luis Paulino Cordova. Morales prepared a purchase contract with a selling price of \$64,000. The contract stated that Cordova was to make a down payment of \$11,000 conditioned on the purchaser's ability to assume a loan on the property in the approximate amount of \$53,000.

Morales prepared a statement for Cordova and the Gallegos with language purporting to permit Morales to quit-claim the property from Gallegos to Cordova. The Gallegos did hold equitable title but not legal title to the property by a deed. The statement prepared by Morales and signed by Luis Cordova, Jesus Gallego and Yolanda Gallego, stated that Cordova's down payment would be disbursed as follows: \$5,000 on July 1, 1996; \$3,000 on July 18, 1996 with the "Balance to be held in Trust until such time as FMHA has proper papers for assuming Loan."

Cordova paid Morales \$5,000 on July 1, 1996, \$3,000 on July 18, 1996 and \$1,690 on August 5, 1996. The \$5,000 and \$3,000 check were given directly to the Gallegos. The check for \$1,690 was cashed by M&M Real Estate.

In December 1996, the escrow was still not closed on the purchase. Morales advised Cordova that the payments on the FMHA loan were three months behind and advised Cordova to make the loan current and to continue to make the monthly

payments on the loan. He gave Cordova the loan number and address where the payments were to be sent. This is when Cordova and his wife Melissa informed the Department that they learned the FMHA loan was in the name of Michael and Guadalupe Talavera.

Melissa Cordova informed the Department that the Talaveras were surprised to learn that she was living in the home. The Talaveras reported that they were not aware that Morales sold the house from Gallegos to Cordova. Cordova has continued to make payments on the FMHA loan in the amount of \$402 per month.

In November 1997, Morales informed Cordova that it was necessary to obtain a new mortgage loan. Cordova paid for appraisals in conjunction with the loan applications presented to him for signature by Morales. Cordova informed the Department that they refused to execute the loan applications because the amount on all of the loan applications was for an amount higher than the balance due on the Purchase Contract. Cordova informs the Department that this was the first time they learned of the tax liens on the property in the amount of \$6,654.26.

The Talaveras have agreed to allow Cordova to remain in the home.

Since occupying the property, Cordova and his wife have completed improvements to the property. They paid a down payment on the property and paid three late payments to FMHA. In addition, they paid for two appraisals on the property and have informed the Department that they have continued to make monthly payments to FMHA since 1996 for an approximate total of \$15,000.

Morales did not advise the Talaveras that he transferred the property from Gallegos to Cordova. He did not advise the Talaveras or Cordova in writing about the tax liens that attached to the property.

Cordova believed that he could assume the FMHA loan on the property.

Morales breached his fiduciary duty to his clients, did not protect and promote their interests and did not deal fairly with all parties to these transactions within the meaning of A.A.C. R4-28-1101(A).

Morales did not disclose in writing to all parties to these transactions information he possessed that materially and adversely affected the consideration paid by the parties as required by A.A.C. R4-28-1101(B).

Morales accepted compensation and represented both parties to a transaction without the prior written consent of both parties as required by A.A.C. R4-28-1101(F).

Morales pursued a course that tends to show misrepresentations while acting in the role of a licensee in violation of A.R.S. § 32-2153(A)(1). He acted for more than one party in a transaction without the knowledge or consent of all parties to the transaction in violation of A.R.S. § 32-2153(A)(2).

Morales' conduct constitutes violations of the provisions of Arizona Revised Statutes, Title 32, Chapter 20 and the Commissioner's Rules, in violation of A.R.S. § 32-2153(1)(3). He failed to keep adequate and complete records of funds deposited with him relating to the real estate transactions described above in violation of A.R.S. § 32-2153(A)(15). He made misrepresentations that tend to show a violation of A.R.S. § 32-2153(B)(3). **DISPOSITION:** Morales' and M&M Real Estate's broker's licenses are revoked upon entry of this order. Morales to pay a civil penalty in the amount of \$2,500.

Schools begin to offer Broker Management Clinics

Two Arizona real estate schools have been approved to present Broker Management Clinics, and more schools are expected to win approval soon.

The course, which replaces the Department's "Broker Audit Clinic," was offered by the Arizona School of Real Estate and Business in Scottsdale, and the Fred Brodsky School of Real Estate in Tucson.

November class schedules for the two schools may be found on the Department's Late-Breaking News Page at www.re.state.az.us. You may contact the schools at the telephone numbers listed on our Schools Page at www.re.state.az.us/Schools.html.

Legislation enacted by the recent legislative session amended A.R.S. § 32-2136 to change the name of the Department's Broker Audit Clinic to Broker Management Clinic. Beginning in November, the Clinics will be presented by real estate schools rather than by the Department. The amendment became effective July 18, 2000.

Who must attend a Broker Management Clinic?

- Each new real estate broker licensee must attend a broker management

clinic within 90 days of original licensure as a broker.

- Each associate real estate broker licensee who changes status to designated real estate broker must attend a broker management clinic within 90 days of the status change, unless the broker has taken the course within the current license period.

- Each designated (including self-employed) real estate broker must attend a broker management clinic once every two year licensing period.

An Order will be issued summarily suspending the real estate license of any designated broker who has not attended a management clinic, with a copy of the Order mailed to the licensee's employing broker.

A broker whose license has been suspended for non-compliance may (1) request a hearing on the suspension or (2) demonstrate compliance, in which case the Commissioner will vacate the suspension and the broker may reinstate the license pursuant to A.R.S. § 32-2131(A).

This enforcement action will be stayed through December 31, 2000 if broker's non-attendance was because the classes were already full.

Some Web search engines still show old ADRE URL

It seems to take forever to get a URL (Web address) listed on the many search engines available to Web surfers, and it is apparently takes even longer to get an invalid URL removed.

Months ago, the Department's address was changed from www.adre.org to www.re.state.az.us.

Unfortunately, we were unable to have our Web server automatically redirect visitors to the new URL.

If you have added the old URL to your Bookmarks or Favorites list, please delete it and add the correct URL.

When visiting the Web site, open the Table of Contents to view the site's content. A drop-down menu on most pages will take you to the most frequently viewed subjects.

Time to order your 2000 Real Estate Law Book

The 2000 edition of the *Arizona Real Estate Law Book* will be published in the first week of November.

This new edition contains all amendments and additions to real estate statutes enacted in the recent legislative session

You may order your copy in advance. The cost is \$15 for the book and \$7 for a special seven-ring binder. The book fits the binder furnished with previous editions. Orders may be placed at our offices in Tucson or Phoenix, or by mail.

If ordered by mail, add \$3 for shipping charges. Mail your check for \$18 (no binder) or \$25 (book and binder) to Law Book, ADRE, 2910 N 44th Street Ste 100, Phoenix AZ 85018.

75 instructors expected to qualify to teach Clinics

Forty real estate instructors attended a September 26 Instructor Development Workshop (IDW) in Phoenix hoping to become certified to teach Broker Management Clinics. All 40 passed the Department examination.

Thirty-five instructors have registered for the second IDW to be held October 20 in Phoenix. No additional registrations are being accepted.

Any instructor who was not able to attend an IDW and who wishes to become certified must attend a Broker Management Clinic offered by an approved Arizona real estate school, then pass a Department examination.

Schools offering Clinics are found on our Web site at www.re.state.az.us.

7 schools now offer on-line CE

The amendment to the Commissioner's Rules enacted earlier this year permits accredited real estate schools to offer on-line continuing education courses to Arizona real estate licensees.

Five schools, all listed on our Web site at www.re.state.az.us/Schools.html, have obtained approval to offer 32 courses as this issue of the Bulletin went to press.

They are:

- C. David McVay Schools, Phoenix
- America's Best, Sequim, WA
- Casler School of Real Estate, Phoenix
- Arizona School of Real Estate & Business, Scottsdale
- Hogan School of Real Estate, Tucson
- RealEstate Web School, Marietta, GA
- ProSchools, Portland, OR

Additional schools are expected to offer on-line continuing education courses in the near future. The names of the schools will be announced on our Web site at www.re.state.az. Click on the Late-Breaking News button, or subscribe to our Late-Breaking News e-mail service.

Make sure your application is filed on time

Commissioner's Rule R4-28-102(A) states that "All documents shall be considered filed on the date received by the Department. An original or renewal application postmarked on or before the end of the application or renewal deadline shall be considered timely."

About 40 to 50 people visit the Department's Phoenix office each day to renew a license or apply for a license. During the last two business days each month, the number increases to more than 200.

You can avoid a long wait at our office when renewing or applying for a license by mailing your application. But be sure it is postmarked on or before the last day of the month.

As an example, suppose your license expires on November 30. Fill

out your renewal application, make sure you list your continuing education credits on page 2, sign it and have your broker sign it, and include a check for your renewal fee. Mail it to the Department making sure it is postmarked on or before November 30.

If your license has expired and you are within the one-year grace period, the same rule applies. Suppose your license expired on November 30, 1999. You may submit your renewal without termination of your license as long as the renewal is postmarked on or before November 30, 2000. In this case, you will also have to complete the Unlicensed Activity Statement on page 4 of the renewal application. Contact the Department at 602-468-1414 X100 to determine the late-fee due in addition to the renewal fee.

Advisory board gains two new members

An amendment to Arizona real estate statutes enacted during the recent legislative session added two members to the Real Estate Advisory Board.

The statute requires the new members to have been engaged in residential real estate brokerage for the five years immediately preceding appointment.

The new members, appointed by Gov. Jane Dee Hull are:

- Vicki L. Cox-Golder of Tucson who was first licensed in 1976 and is an associate broker with Vicki Cox & Associates.

- Robert Thomas Flibotte of Payson. Mr. Flibotte is an associate broker with CWB-Bishop Realty and has been licensed since 1982.

ARIZONA

REAL ESTATE BULLETIN

Arizona Department of Real Estate
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